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Review of the efficiency of the administrative and financial functioning of the United Nations

Procurement-related arbitration

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on procurement-related arbitration (A/54/458). The Committee notes that the report of the Secretary-General was prepared and submitted in response to the request made by the General Assembly in paragraph 2 of its resolution 53/217 of 7 April 1999. As indicated in paragraph 1, the report also takes into account the recommendations contained in the report of the Office of Internal Oversight Services (OIOS) (A/53/843), and the views expressed by the Member States on the subject.

2. The Advisory Committee had previously deferred consideration of the report of the Secretary-General. In its first report on the proposed programme budget for the biennium 2000-2001,[1] the Advisory Committee stated that, in order to assist it in the examination of the procurement-related arbitration report, it had requested the Board of Auditors to conduct a specific examination of practices and procedures with regard to the handling of arbitrations/claims cases by the United Nations administration. A copy of the letter sent to the Chairman of the Board of Auditors is attached to the present report (see annex I).

3. The Advisory Committee requested the Board of Auditors to focus its examination on the following areas: (a) the extent to which contract negotiation has minimized the Organization's exposure to claims; (b) procedures for the selection of arbitrators and outside legal counsel, and their payment, with particular attention to the negotiation of fees, the certification of payments and the line of authority and provision of internal oversight for the same; and (c) the requirement for full budgetary disclosure for fees, awards and settlements.

4. In March 2000, the Advisory Committee was provided with an initial report of the Board's findings and recommendations, which covered the period from January 1998 to November 1999. The summarized findings and recommendations of the Board are contained in paragraphs 182-227 of the report of the Board of Auditors.[2] In its preliminary conclusions, contained in paragraphs 19 to 21 of its report A/55/487, the Advisory Committee took note of the comments of the administration on the subject (see A/55/380, paras. 17-31), and stressed the importance of fully implementing the Board's recommendations. The Committee also requested that the Secretary-General should submit to it a progress report on the implementation of the Board's recommendations resulting from the special audit and that detailed information on arbitration/claim cases, including related costs and fees, should be provided to it in the context of the Committee's consideration of budgets of peacekeeping operations for each new budget year.

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5. The General Assembly, in its resolution 55/220 of 23 December 2000, approved the recommendations and conclusions of the Board of Auditors and endorsed the observations and recommendations of the Advisory Committee in that regard.

6. In addition, in March 2000, the Advisory Committee further requested the Board to expand its examination from the period covered (1998-1999) back through 1994 and to include, apart from the initial areas of focus mentioned in paragraph 3 above, the use of exigency procedures in the award of contracts and the amount of arbitration awards and legal fees. A copy of the letter sent by the Committee to the Board of Auditors is attached to the present report (see annex II).

7. **The Advisory Committee commends the Board for the work performed during the first special audit and the second expanded audit of the practices and procedures regarding the handling of arbitration/claims cases by the United Nations administration, which greatly expand on the information and assist in the consideration of the report of the Secretary-General on procurement-related arbitration (A/54/458).** The text of the report of the Board of Auditors in connection with the second expanded audit, duly amended owing to confidentiality requirements, is attached as annex III to the present report. During its consideration of the reports, the Committee met with members of the Audit Operations Committee of the Board of Auditors, as well as representatives of the Secretary-General, who provided additional information and clarification.

8. The Committee notes that the findings of the Board, in its second expanded audit, confirm and supplement the findings and recommendations made in the first report. **As shown in paragraphs 8 to 30 of the Board's report contained in annex III, greater attention to the processing of contract negotiation might have minimized the unnecessary risks of subjecting the United Nations to claims that could have otherwise been avoided. The Advisory Committee takes note of paragraphs 9 to 11 of the report of the Secretary-General (A/54/458) and, having discussed the matter with representatives of the Secretariat, the Committee is of the opinion that the respective roles of the Office of Legal Affairs and the Office of Central Support Services are not fully coordinated and that, in many instances, such lack of coordination exposed the United Nations to claims since there was a lack of sufficient rigour in negotiating, reviewing and managing contracts. The Committee therefore fully endorses all the comments and recommendations of the Board. The Committee believes that, if the recommendations are fully implemented, the shortcomings identified by the Board will be eliminated and the capacity of the Secretariat strengthened, thereby minimizing the exposure of the Organization to claims and litigation. The Committee intends to follow up on this matter with the Secretariat.**

9. In view of the timing of the second expanded audit of the Board, the Committee notes that it is not possible for it, at this stage, to evaluate the outcome of the implementation by the administration of the Board's recommendations contained in the first and the second audit reports. **The Committee therefore requests that a comprehensive report on the results of the implementation of the Board's recommendation be submitted to it in February 2002, in the context of the review of the peacekeeping budgets for the period from 1 July 2002 to 30 June 2003. In this connection, however, the Committee points out that the comprehensive implementation report of the Secretary-General should not only indicate the actions taken to implement any recommendation, but should also clearly indicate the changes, effects and results of the actions taken.**

10. The Committee notes that the Board of Auditors based its comments in the expanded audit on the review of 49 cases summarized in paragraph 4 of its report, with respect to the period from 1994 to 1997. Of this total, 42 cases were initiated against the United Nations with a value of $222.35 million, and 7 were initiated by the United Nations against contractors with a total value of $3.9 million. As indicated in the summary of the report of the Board of Auditors, the total amount awarded in favour of the claimants was $28.0 million and the total amount awarded in favour of the United Nations was $1.09 million. The Committee recalls that, in the initial 1998-1999 audit, the Board reported on five cases in connection with which the United Nations had to pay approximately $14.0 million in awards, arbitration and legal fees.[3]

11. The Committee notes, however, that the real cost to the United Nations is in excess of the awards against it, since the cost of the staff time and other resources related to the Organization's involvement has also to be

borne in mind. **The Committee is therefore convinced that it is essential for the administration to implement the recommendations of the Board, particularly as regards contract formulation and management, in order, in future, to minimize, if not eliminate, the risk to which the United Nations might be exposed.**

12. The Board of Auditors had referred to the need for full budgetary disclosure of fees, awards and settlements and reporting on the status of arbitration cases,[4] and the administration provided its comments in the report of the Secretary-General (A/55/380, paras. 61-62). The Board, in paragraph 41 of its expanded audit, takes note that "the Office of Legal Affairs has taken action to implement the recommendation" (see annex III). The information, previously provided to the Committee, upon request, is now provided on an annual basis, prior to the start of the Committee's consideration of the Secretary-General's financing reports on individual peacekeeping operations. The latest consolidated summary, sent to the Committee in January 2001, includes information on arbitration of disputes involving the United Nations since 1995.

13. **In addition to the information which is provided to the Committee, the Committee recommends that all claims, names of claimants and the amounts claimed, be clearly and fully disclosed in the peacekeeping performance reports that are submitted to the General Assembly, and that specific information on the circumstances that led to the claim be provided to the Advisory Committee in the context of its consideration of the performance report in question.**

14. The issue of procedures for selection of arbitrators and outside legal counsel was dealt with by the Board in its report,[5] in which several weaknesses in the selection of arbitrators or outside legal counsel were indicated and recommendations made in that connection. The comments on behalf of the administration are contained in paragraphs 20 to 31 and 59 and 60 of A/55/380. As to the recommendation on the need to segregate functions within the Office of Legal Affairs, the Committee recalls the administration's comments in paragraph 31 of A/55/380. In addition, the Legal Counsel submitted additional information on the matter to the Committee in March 2000.

15. Furthermore, regarding subsequent progress on the implementation of those recommendations of the Board, the Committee notes, as indicated in paragraph 33 of the expanded audit report (see annex III), that the Office of Legal Affairs has issued an internal instruction, provided to the Committee, which aims at making the separation of functions on the selection and engagement of outside counsel and selection and appointment of party-appointed arbitrators clear within that Office. **The Committee points out that the extent to which the new arrangements will represent a significant change from current procedure will depend on how they are carried out in practice. It emphasizes the need to ensure that all procedures designed to prevent a conflict of interest, or the appearance of a conflict of interest, are rigorously applied.**

16. Paragraph 35 of the expanded audit report (annex III) refers to the increase in a fee cap in respect of services engaged by the Organization. **The Committee has concluded from the observations in the first and second audits that a greater effort needs to be made by the administration in monitoring more effectively the cost to the United Nations of fees to outside counsel. The Committee stresses the need, from the outset, to define as clearly as possible the scope of any action proposed, and for an awareness of the possibility of a contractor submitting a low initial bid, and making up for it later through a series of contract renegotiations. Where applicable, contracts awarded to a successful bidder should contain provisions to ensure strictest adherence to fee caps. A contractor's prior conduct in this regard should be taken into account when deciding whether or not to use that contractor again.**

17. **The Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General on procurement-related arbitration (A/54/458). The Committee stresses the importance of fully implementing the recommendations made by the Board of Auditors in the context of the expanded examination of the practices and procedures with regard to the handling of arbitration/claims cases by the United Nations administration. As stated in paragraph 8 above, the Committee intends to monitor this issue. The Committee will also revisit this issue in the context of the progress report on the**

implementation of the recommendations of the Board, requested in paragraph 9 above.

Notes

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 7* (A/54/7), para. III.18.

[2] Ibid., *Fifty-fifth Session, Supplement No. 5* (A/55/5).

[3] See ibid., para. 186.

[4] See ibid., paras. 225-227.

[5] See ibid., paras. 200-224.

Annex I

AC/1391

Advisory Committee on Administrative
and Budgetary Questions

7 July 1999

Dear Mr. Prempeh,

In its review of the financing of the various peacekeeping operations, as well as the United Nations regular budget in recent months, the Advisory Committee has encountered reference to a significant number of arbitration and claims cases, many involving private parties. The Advisory Committee has noted a serious lack of disclosure with regard to the information it deems essential for it to perform the functions assigned to it by the General Assembly.

In this regard, the Advisory Committee is cognizant of the circumstantial requirements for confidentiality in a number of instances but emphasizes that the function it exercises on behalf of the General Assembly requires full and complete disclosure of information to it, bearing in mind that the Committee's procedures can protect the privileged nature of this information.

In order to assist it, the Advisory Committee, in accordance with financial regulation 12.7, requests the Board of Auditors to conduct a specific examination of practices and procedures with regard to the handling of arbitration/claims cases by the United Nations Administration.

Areas of focus should include:

- the extent to which contract negotiation has adequately minimized the Organization's exposure to claims;
- procedures for the selection of arbitrators, and outside legal counsel, and their payment, with particular attention paid to the negotiation of fees, the certification of payments and the line of authority and provision of internal oversight for the same;
- the requirement for full budgetary disclosure for fees, awards, and settlements.

In making this request, the Advisory Committee is aware of the report of the Office of Internal Oversight Services on the review of procurement-related arbitration cases (A/53/843), as well as the General Assembly's request in its resolution A/53/217 for a report by the Secretary-General on procurement-related arbitrations to be submitted early in the fifty-fourth session of the General Assembly. The Advisory Committee intends the specific examination of the Board to be complementary to these reports, which are and will be public documents,

Mr. Osei T. Prempeh
Chairman
Board of Auditors
United Nations
New York, N. Y. 10017

bearing in mind what the Committee has stated above with regard to the confidential nature of its proceedings. In this regard, the findings of the Board should be submitted for sole use of the Advisory Committee on Administrative and Budgetary Questions.

Yours sincerely,

(*Signed*) C. S. M. **Mselle**
Chairman

Annex II

AC/1424

Advisory Committee on Administrative
and Budgetary Questions

23 March 2000

Dear Sir John,

In July I wrote to Mr. Prempeh on behalf of the Advisory Committee requesting that the Board conduct a specific examination of practices and procedures with regard to the handling of arbitration/claims cases by the United Nations Administration. The Board's report on the results of this specific examination was transmitted to the Committee earlier this month and the Committee commends the Board for the work it has carried out.

As a result of its consideration of the Board's report as well as its meetings with the Audit Operations Committee, the Advisory Committee has decided to request you to expand your examination from the period covered (1998-1999) back through 1994. In addition to the areas of focus mentioned in my letter of 7 July 1999, you may wish to pay particular attention to the use of exigency procedures in the award of contracts and to scrutinize data available on the total amounts of arbitration awards and legal fees.

Upon receipt of the results of your further examination the Committee, after hearing the views of the United Nations Administration, will report to the General Assembly, hopefully early in the Autumn of 2000.

In the meantime, the Committee requests you to make your current report available to the General Assembly in a form consistent with requirements for confidentiality. In this regard, I will be writing to the Secretary-General requesting his response in accordance with General Assembly resolutions 50/204 A and 52/212 B.

Yours sincerely,

(*Signed*) C. S. M. **Mselle**
Chairman

Sir John Bourn, KCB
Chairman
Board of Auditors
United Nations
New York, N. Y. 10017

Annex III

Report of the Board of Auditors on the expanded examination of the practices and procedures with regard to the handling of arbitration/claims cases by the United Nations Administration

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I. Report of the Board of Auditors

Summary

The Board of Auditors conducted an expanded examination of the manner in which the United Nations Administration handled arbitration and claims cases from the period 1994 to 1997. The Board previously conducted an audit on this subject covering the period January 1998 to November 1999 and issued a report thereon to the Advisory Committee on Administrative and Budgetary Questions in March 2000. The Board's findings and recommendations were also included in volume I of the report of the Board on the financial statements of the United Nations for the biennium 1998-1999.[a] The present audit focused on the extent to which contract negotiations have minimized the Organization's exposure to claims; the selection of arbitrators and outside legal counsel; negotiation of fees and their payment; and budgetary reporting. It covered the review of 42 claim cases against the United Nations with a total value of $222.35 million and 7 cases initiated by the United Nations against contractors with a total value of $3.9 million. The total amounts awarded in favour of the claimants was $28.0 million, while the total amount awarded in favour of the United Nations was $1.09 million.

The Board's main findings are the following:

(a) It was not clear from the current form of United Nations aircraft charter agreements whether the "overflight" charges may be considered as "direct taxes" from which the United Nations may claim exemption or as "charges for public utility services" from which the United Nations may not be exempt. This uncertainty could lead to further disputes as to the Organization's liability to pay such charges;

(b) The United Nations entered into a "cost plus fee contract" for the provision of various support services without placing clearly defined limits on the scope of services to be rendered and the nature of costs to be reimbursed;

(c) The United Nations Children's Fund (UNICEF) failed to heed warnings concerning a contract for the manufacture of up to 500,000 scales over a 10-year period at a cost of $36.5 million. Although UNICEF has exercised its option to reduce its commitment to purchasing a maximum of 200,000 scales, the Board was concerned that at the rate of consumption of 1,500 scales per year, it would take UNICEF some 130 years to exhaust this level of stock;

(d) A peacekeeping mission had given premature authorization to a contractor to provide services prior to the establishment of a contract. This resulted in the United Nations having to settle a claim in the amount of $385,000;

(e) Although the Office of Legal Affairs has issued internal guidelines on the selection and engagement of outside counsel, it continued to decline to obtain outside legal services through the Procurement Division;

(f) In one case involving claims totalling $29.5 million:

(i) The United Nations was held liable by the Arbitral Tribunal to settle a claim of $12.3 million in the amount of $4.8 million for which the settlement agreement had not been approved at the appropriate level;

(ii) The claimant was awarded interest of more than $800,000 at the rate of 9 per cent per annum in the absence of any stipulated rate of interest in the settlement agreement;

(iii) In the absence of a clear definition of the term "full replacement value" in the settlement agreement, the Arbitral Tribunal held that the United Nations counterclaim of $1.543 million for lost equipment should be valued at the lower depreciated value of $202,000 rather than the value of acquiring new equipment;

(g) The United Nations settled a claim for $60,000 without obtaining the standard Release and Waiver of Claim from the claimant. The claimant subsequently reasserted his claim in the amount of $345,000.

The Board made recommendations to strengthen contract negotiation, formulation and interpretation and to improve the method of selecting outside legal counsel and arbitrators.

A list of the Board's main recommendations is included in paragraph 6 of the present report.

Introduction

1. The Board of Auditors conducted an expanded examination of the manner in which the United Nations Administration handled arbitration and claims cases for the period from 1994 to 1997. The Board had previously conducted an audit on the subject covering the period January 1998 to November 1999 and issued a report thereon in March 2000. The Board's findings and recommendations were also included in volume I of its report on the financial statements of the United Nations for the biennium 1998-1999.[b] As part of the present audit, the Advisory Committee on Administrative and Budgetary Questions invited the Board to examine the areas of focus mentioned in the Advisory Committee's letter of 7 July 1999:

(a) The extent to which contract negotiation has adequately minimized the Organization's exposure to claims;

(b) Procedures for the selection of arbitrators and outside legal counsel and their payment, with particular attention to the negotiation of fees, the certification of payments and the line of authority and provision of internal oversight for the same;

(c) The requirement for full budgetary disclosure for fees, awards and settlements.

In addition, the Advisory Committee requested the Board to expand its examination to cover the use of exigency procedures in the award of contracts and the amounts of arbitration awards and legal fees.

2. The submission for arbitration of disputed claims arising from commercial contracts is in accordance with section 29 of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly, in its resolution 22 A (I) of 13 February 1946, under which the United Nations should make provisions for appropriate ways of settling such disputes. It has been the practice of the United Nations to incorporate in all commercial contracts an arbitration clause, which provides the remedy of arbitration in the event a dispute is not settled amicably. The General Assembly, in its resolution 31/98 of 15 December 1976, adopted the Arbitration Rules of the United Nations Commission on International Trade and Law (UNCITRAL), which the United Nations uses in the settlement of such disputes. In addition, the General Assembly, in its resolution 35/52 of 4 December 1980, adopted the UNCITRAL Conciliation Rules for the amicable settlement of similar disputes.

3. The Office of Legal Affairs, through the General Legal Division, currently handles the legal aspects of settling disputed claims, which may include the legal analysis and evaluation of the case, direct negotiation with the claimant, selection of an arbitrator and outside legal counsel, and the formulation of a settlement agreement. The General Legal Division's role includes the supervision of all aspects of representation of the United Nations by outside counsel in arbitration cases, monitoring all aspects of the cases, coordinating interviews with relevant United Nations personnel and witnesses and reviewing statements.

4. With respect to the period 1994 to 1997, the Board examined 49 cases, most of which involved several elements. These cases were resolved as follows:

(a) One, decided through arbitration;

(b) Twenty-seven, settled through negotiation (including four claims initiated by the United Nations);

(c) One, still pending arbitration;

(d) Seventeen, still pending for negotiation;

(e) One, withdrawn by the claimant;

(f) Two, considered closed by the Office of Legal Affairs.

Details of the cases examined are shown in appendices 1, 2 and 3.

5. The Board's findings and recommendations were conveyed to the United Nations Administration, whose comments have been incorporated in the report where appropriate. The Board's main recommendations are reported in paragraph 6. The detailed findings are discussed in paragraphs 7 to 83. The Board is pleased to note that the Administration has already taken steps to implement a number of recommendations.

Main recommendations

6. **The Board's main recommendations are that:**

(a) The Office of Legal Affairs and the Field Administration and Logistics Division should clarify whether the "overflight" charges should be

regarded as a direct tax or charges for public utility services (para. 11);

(b) When entering into "cost plus fee contracts", the United Nations should ensure that such contracts clearly define the scope of services to be rendered and the nature of costs to be reimbursed (para. 15);

(c) UNICEF should prepare a proper business assessment before entering into major contractual commitments (para. 20);

(d) The Procurement Division should advise Offices away from Headquarters of the need to exercise caution in giving premature authorization for contractors to provide goods and services prior to the finalization of the contracts, to prevent the creation of unintentional legal obligations (para. 24);

(e) The Office of Legal Affairs and the Procurement Division should coordinate the establishment of procedures to ensure that proper internal controls are in place for the solicitation, selection and setting of fees in respect of outside counsel (para. 34);

(f) Concerning the formulation of settlement agreements, the Office of Legal Affairs should:

(i) Review the use of "proviso" clauses and clarify the circumstances in which they can be used and held valid;

(ii) Ensure that settlement agreements include a clear provision concerning the applicable rate of interest due on claims and counterclaims;

(iii) Clearly define ambiguous terms, such as " full replacement cost" (para. 65);

(g) The Office of Legal Affairs should advise all United Nations offices of the need to secure a Release and Waiver of Claims from claimants, to protect the interest of the United Nations from further claims (para. 73);

(h) The Office of Legal Affairs should prescribe a period of limitation on the filing of claims against the United Nations, to be incorporated in all United Nations contracts. This should be developed in consultation with relevant United Nations offices (para. 79).

The Board's other recommendations are shown in paragraphs 31, 58, 71 and 83.

II. Detailed findings and recommendations

A. The extent to which contract negotiation has adequately minimized the Organization's exposure to claims

7. The Board found a number of examples of claims where greater attention to the processing of contract negotiation might have minimized the Organization's exposure to claims.

8. In one case (appendix 2, No. 8) an international organization billed the United Nations for en route "overflight" navigation charges with regard to flights of aircraft on mission for the United Nations from 1990 to 1994. The claim amounting to $750,000 was initially resisted by the United Nations, which contended that its privileges and immunities had the effect of exempting it from paying the charges. The immunity provision, which the Office of Legal Affairs interpreted as extending to the charges in question, and is contained in the current form of United Nations aircraft charter agreements, exempts the United Nations from payment of direct taxes and duties other than taxes and duties that are no more than charges for public utility services.

9. The claim was settled for $275,000 in favour of the claimant without resolving the issue of exemption between the parties. The Board noted, however, that the practice of the Field Administration and Logistics Division was to reimburse the aviation contractors for "overflight" charges.

10. The Board considers that it is not clear whether the "overflight" charges may be considered as "*direct taxes*", from which the United Nations may claim exemption, or as "*taxes and duties that are no more than charges for public utility services*", from which the United Nations may not be exempt.

11. **The Board recommends that the Office of Legal Affairs and the Field Administration and Logistics Division should clarify whether "overflight" charges should be regarded as a direct tax or charges for public utility services.**

12. In a second case, the United Nations entered into a "cost plus fee contract" (appendix 2, No. 27) for the provision of various support services, including logistics and related services for the United Nations Verification Mission in Angola (UNAVEM) to a maximum amount of $17.7 million. Under the terms of the contract, the United Nations was required to reimburse the contractor for authorized costs of work, material and services performed. A dispute arose when the contractor invoiced the United Nations for additional costs incurred amounting to $1.4 million, arising from changes in Angolan law, financial costs due to late payment, bonus payments, leave pay claims and other claims. The contractor claimed that most of the additional costs incurred were reimbursable by the United Nations under the contract but the Office of Legal Affairs contended that the amounts were not envisaged under the cost plus fee concept. Subsequently, however, the Office of Legal Affairs suggested the payment of some of the costs claimed, including the items which it had initially indicated should not be compensated, in the context of an overall settlement of the matter. On its part, the United Nations filed a counterclaim of $415,000 for the loss or damage to United Nations-owned property and equipment used by the contractor in the performance of the contract. On the recommendation of the Office of Legal Affairs, the United Nations and the contractor agreed to a settlement whereby both parties released each other from their claims and counterclaims.

13. The Board was concerned that the United Nations had entered into a "cost plus fee contract" without placing clearly defined limits on the scope of services to be rendered and the nature of the costs to be reimbursed.

14. The Office of Legal Affairs reassured the Board that it makes every effort to ensure that language used in contracts referred to it for review is as precise as possible but that it was impossible at the time a contract is prepared to foresee every contingency that might arise in the future.

15. **The Board recommends that, when entering into "cost plus fee contracts", the United Nations should ensure that such contracts clearly define the scope of services to be rendered and the nature of the costs to be reimbursed.**

16. In a third case, the United Nations Children's Fund (UNICEF) entered into a contract in 1992 (appendix 2, No. 6), for the manufacture of a maximum 500,000 "solar powered, stand-on scales" at 120 deutsche marks (DM) ($73) per scale, or a minimum of 400,000 scales over a period of eight years in the amount of some $36.5 million. This contract was initiated from a licence donated by a Member State to UNICEF for the use of a vibration-type measuring apparatus under the patent of "Goodier Sensors". A deed of agreement was executed for the donation whereby UNICEF agreed to arrange for the manufacture of 150,000 scales.

17. The Board noted that the quantity of scales that had to be ordered by UNICEF under the contract was in excess of the UNICEF commitment of 150,000 scales in total under the deed of agreement with the donor Member State. The Comptroller of UNICEF had, at the initiation of the contract, raised major points of concern on the proposed contract, particularly on the preparedness of UNICEF to use the type of scale in 10 years; the risk that the model might become obsolete; the possibility that better alternatives might be developed by other suppliers; the possibility that the product might not function as expected; and apprehension about the stipulation that UNICEF should pay in advance DM 3 million ($1.83 million), which would be recoverable only if UNICEF ordered the maximum of 500,000 scales. The contract further provided that UNICEF would forfeit its right to recover or claim payment of the amount outstanding on the advance payment if UNICEF decided to terminate the purchase of the scales and also that no scales would be delivered until two years after the contract was signed. Despite the concerns raised, UNICEF proceeded with the contract.

18. The Office of Legal Affairs informed the Board that, from the beginning of the contract in May 1992 to November 1995, UNICEF had bought a total of 28,116 scales, out of which 4,550 were issued and 23,566 remained in stock. The Board notes that, at this rate of consumption, it would take more than 260 years to use the minimum quantities provided for under the contract. The Office of Legal Affairs advised UNICEF on the possibility of reducing the number of scales to be manufactured for UNICEF. In March 1996, after UNICEF had failed to maintain orders at the minimum of 50,000 scales per year, the counsel for the contractor notified UNICEF of the latter's non-compliance with the contract and demanded the return of its bank guarantee for at least 100,000 scales, representing

DM 1.2 million ($732,000). Furthermore, the contractor raised a claim between $8 million and $9 million for breach of contract. In March 1997, on the advice of the Office of Legal Affairs, UNICEF renegotiated with the contractor the minimum yearly order requirement from 50,000 to 25,000 scales per year, at the increased rate of DM 146.32 ($89) per scale and exercised its option not to purchase any scales beyond a total of 200,000. The Board notes that, even with this reduction in the contract, it would take UNICEF some 130 years to issue the scales ordered. In May 1998, as a result of the renegotiated term of the contract UNICEF forfeited DM 2.1 million ($1.28 million) of the advance payment corresponding to the 300,000 reduction in the total scales to be ordered under the contract.

19. The Board was concerned that UNICEF had failed to heed warnings about this business arrangement before signing the contract. UNICEF informed the Board that it had evaluated this contract and raised a number of issues after seeking advice from the General Legal Division and that, after entering into this particular contract, UNICEF had strengthened and improved its processes and capacity to further enhance its evaluation capability.

20. **The Board recommends that UNICEF should prepare a proper business assessment before entering into major contractual commitments.**

21. In a fourth case (appendix 2, No. 5), a contractor made arrangements to undertake its demining activities in Somalia without an approved contract. This was made possible by the premature issuance of a letter of intent by the United Nations Operation in Somalia (UNOSOM) authorizing the contractor to "proceed with such arrangements as are necessary to ensure that your firm is prepared to execute its contract ...".

22. The contractor was unable to carry out any demining activity owing to a strike by its local Somali staff and the deterioration of the security situation in Somalia. Although no formal contract was executed, the contractor subsequently lodged a claim in the amount of $1.5 million for costs incurred in preparing to carry out the anticipated contract.

23. Notwithstanding the local conditions which prevailed at the time, the Board was concerned that the United Nations had been exposed to financial obligations owing to the acts or omissions of its contract administrators and had to settle the amount of $385,000 despite the absence of benefit or service realized by the Organization.

24. **The Board recommends that the Procurement Division advise Offices away from Headquarters of the need to exercise caution in giving authorization for contractors to provide goods and services prior to the finalization of the contracts, to prevent the unintended creation of legal obligations.**

25. In a fifth case, involving two aircraft charter contracts (appendix 2, No. 28) for the lease of helicopters by a peacekeeping mission in Guatemala, the dispute arose from a claim for depositioning and positioning charges of $60,000 and $100,000, respectively.

26. The United Nations entered into an aircraft charter agreement in May 1997 for the United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA) mission area covering a 12-month period, effective June 1997 through May 1998, at a maximum contract price of $1,134,344. Among the elements in the costs were the positioning cost of $60,000 and the depositioning cost of $60,000. In June 1998, another agreement was executed for a 12-month period effective July 1998 to June 1999 for $1,146,544. The second agreement provided for only a positioning cost of $100,000. Two invoices were submitted by the contractor in the amount of $60,000 for depositioning costs under the first agreement and $100,000 for positioning costs under the second agreement. The Organization disputed the claims since the Field Administration and Logistics Division had confirmed that the helicopter had been neither depositioned nor positioned as it had been in continuous service since its arrival in April 1998. The contractor explained that there was no stipulation in the contract document that the mobilization and demobilization charges were to cover only direct movement costs. The Office of Legal Affairs, in its review and analysis of the case, stated that "the ambiguity in the contract, if ever the case would proceed to arbitration, would be construed against the United Nations". On the recommendation of the Office of Legal Affairs, the Organization settled the claim for $90,000 to avoid a lengthy and costly process of arbitration.

27. The Board was concerned that a dispute which cost $90,000 could have been avoided had the Administration clearly defined the circumstance under

which particular costs would be reimbursed. In this particular case, the Board considers that the contract should have stipulated that "positioning" and "depositioning" costs would only be reimbursed if the contractor incurred direct movement costs.

28. The Office of Legal Affairs informed the Board that it had not been requested to review the contract in question but expressed its availability in assisting the officers of the substantive departments whenever such assistance was needed. However, the Office of Central Support Services commented that the standard contract language concerning positioning and depositioning that resulted in the successful claim against the United Nations had been reviewed and cleared by the Office of Legal Affairs previously.

29. In a sixth case, involving a contract (appendix 2, No. 9) in the amount of $679,697 for the provision of the United Nations Reality System, a dispute arose due to failure to identify in the contract specifically which version of Sybase the United Nations expected the Reality System to use. As a result, the Reality System developed by the contractor which used the latest version of Sybase did not operate with IMIS which continued to run under an old version of Sybase.

30. The Board was concerned that the contract did not specify the Sybase version which the United Nations expected the system to use, resulting in two amendments to the contract requiring a change in the system from UNIX/Sybase to MS-DOS version and a reduction from 16 to 6 in the number of sites where the United Nations Reality System would be used. Although the contract price was reduced to $322,000, the average cost of each site increased by 26 per cent, from $42,481 to $53,607. Accordingly, no settlement payment was actually made to the claimant.

31. **The Board recommends that in the purchase of specialized equipment, the Procurement Division should consult with relevant offices of the United Nations to confirm that purchases requested are fully compatible with related installations.**

B. Procedures for the selection of arbitrators and outside legal counsel and their payment

32. In its previous report on the handling of arbitration cases, the Board had identified weaknesses in the selection of arbitrators or outside legal counsel. In its present examination, the Board confirmed that similar weaknesses had existed during the period 1994 to 1997.

33. In January 2001, the Office of Legal Affairs informed the Board that it has now issued an internal instruction on the selection and engagement of outside counsel and selection and appointment of party-appointed arbitrators and related issues. Subsequently, the Office of Central Support Services informed the Board that the Office of Legal Affairs continued to decline to obtain outside legal services through the Procurement Division, preferring to undertake its own solicitation, selection and negotiation. While the Board welcomes the establishment of such internal guidelines, the Board considers that there is further scope for strengthening internal control by more involvement of the Procurement Division in these functions.

34. **The Board recommends that the Office of Legal Affairs and the Procurement Division should coordinate the establishment of procedures to ensure that proper internal controls are in place for the solicitation, selection and setting of fees in respect of outside counsel.**

35. The United Nations secured the services of an outside legal counsel in July 1995 to defend the claims submitted by a contractor (appendix 1, No. 1). A fee cap in respect of the services was initially set at $990,000 for the first year of work in the case. For the work during the second year, an additional $550,000 cap was agreed to, for a total cap of $1.54 million. The increase covered work to be performed on requests for interpretation of an interlocutory award; proceedings on the contractor's request for interim payment; discovery; and hearings on the merits of claims and counterclaims.

36. In November 1996, the Director of the General Legal Division expressed concern at the excessive number of hours and many lawyers involved in the case, thus the possible over-billing by the counsel. It had been noted that one associate alone had spent 217.5 hours for the month of August 1996 and that for the same month there were nine lawyers who had been utilized by the law firm. This prompted the General Legal Division to seek significant adjustments in the amount invoiced. Thus, at the conclusion of the arbitration proceeding, the total amount of legal fees

paid to the outside counsel reached $1.38 million, some $160,000 below the authorized fee cap.

37. The Office of Legal Affairs informed the Board that the General Legal Division spends considerable time monitoring the work of firms, including scrutinizing the firms' invoices and requesting supporting information as necessary. In addition, the General Legal Division seeks and obtains reductions in billed fees where appropriate.

38. The Board notes the difficulties in establishing fee caps and further encourages the Office of Legal Affairs to continue to carefully assess fee caps and monitor the services received.

C. The requirement for full budgetary disclosure of fees, awards and settlements

39. In the previous audit on arbitration claims, the Board reviewed the need for full budgetary disclosure and reporting on the status of arbitration cases. The Board had recognized that disclosure on arbitration cases would need to be effected in such a way as to respect the confidentiality requirement of the UNCITRAL Arbitration Rules.

40. The Board had recommended that the Office of Legal Affairs should routinely provide to the Advisory Committee on Administrative and Budgetary Questions a consolidated summary setting out information on arbitration and other claims cases, such as the names of the claimants, the nature of the case and the amounts claimed.

41. The Board noted that the Office of Legal Affairs had taken action to implement the recommendation. The most recent updated chart of arbitration of disputes involving the United Nations was provided in January 2001 to the Office of Programme Planning, Budget and Accounts for onward transmission to the Advisory Committee.

D. Exigency procedures in the award of contracts

42. The Board reviewed the procedures followed by the Administration in the award of an exigency contract in January 1994 to a contractor in the amount of $56.28 million. The Purchase and Transportation Service had initially recommended the contract on the grounds that it would avoid delay and that, if no catering contract was secured for UNOSOM, the costs would be estimated at $2 million per week. The Headquarters Committee on Contracts agreed on 18 August 1993 to reject all proposals and recommended that direct negotiations be entered into immediately with the contractor without the necessity of conducting new solicitations.

43. By the end of October 1993, no contract had been finalized and the Office of Legal Affairs expressed the view that placing an order would be unauthorized and without legal foundation. Subsequently in November 1993, on the recommendation of the Headquarters Committee on Contracts, the Purchase and Transportation Service issued a purchase order for a 60-day supply of food rations at a cost not to exceed $9 million to avoid UNOSOM not having a rations contract.

44. While noting that it had taken some four months to finalize an exigency contract for the supply of rations to UNOSOM, the Board was generally satisfied that the Administration had followed appropriate procedures in view of the complexities of the case and the need to avoid unnecessary costs.

E. Amounts of arbitration and settlement awards and legal fees

45. The Board examined five cases of arbitrated claims against the United Nations (appendix 1) and seven United Nations initiated claims (appendix 3) from 1994 to 1997. The Board's comments on four of those cases are set out below. The Board's findings regarding legal fees paid to outside legal counsel in relation to a certain case, are set out in section B of the present report.

46. The United Nations filed a claim against the lessors (appendix 3, No. 7) in the amount of $2.6 million for reimbursement of excessive charges in connection with the lease of the premises at One United Nations Plaza and Two United Nations Plaza which was settled for $1 million in favour of the Organization.

47. The Board's review showed that, in October 1995, a report on the lease examination for the years 1991 to 1994 was submitted by consultants to the Office of Legal Affairs indicating, inter alia, the

overcharges to the United Nations by the lessor for the maintenance and operating costs of the premises. The Facilities and Management Division notified the lessor of the excessive charges in a letter dated 14 February 1996, which was treated as the first Notice of Claim.

48. The lessor wrote to the Department of Administration and Management in April 1997, asserting that it had never received a formal claim from the United Nations for excessive charges. Consequently, the Office of Legal Affairs wrote to the lessor to reassert the United Nations claim for overcharges.

49. The Office of Legal Affairs recommended a settlement of $1 million in consideration of the arbitration risk, the cost of arbitration to the United Nations and its effect on the business relationship between the United Nations and the lessor. The Board noted that the amount of $1 million did not include interest on the amounts overpaid from 1990 to 1997, which when computed at the rate of 9 per cent per annum, based on New York law, could reach some $500,000.

50. The Board further noted that, in several claims cases brought against the United Nations and settled through negotiation, the Office of Legal Affairs had agreed to the imposition of interest charges, which the Organization had actually paid. In this particular case, where the United Nations was the claimant, the interest component of the claim was not asserted. The Office of Legal Affairs informed the Board that the Organization did not want to jeopardize the lease negotiation with the lessor by raising the claim during those negotiations; under those circumstances the Office of Legal Affairs did not believe that addressing the question of interest was necessary or warranted.

51. The Board trusts that the Office of Legal Affairs will endeavour to secure compensation for interest on claims made by the United Nations, where appropriate.

52. In another case (appendix 2, No. 14), the Board noted that the Office of Legal Affairs had recommended a settlement of the claim amounting to $1.55 million although relevant, factual and legal issues had not been exhaustively considered in the analysis of claims.

53. The claim for demining activities in Angola consisted of three elements with an aggregate amount of $3.084 million, of which a settlement of $1.55 million was made, broken down as follows:

	(In millions of United States dollars)	
	Claim	*Settlement*
Pre-deployment	1.426	0.875
Delay in project implementation	1.391	1.250
Demobilization	0.267	0.267
Total	**3.084**	**2.392**
Credit–liquidated damages	(1.054)	(0.842)
Settlement (net)		1.550

54. The General Legal Division concurred with the settlement of $1.55 million recommended by the Procurement Division and the Field Administration and Logistics Division. On the issue of pre-deployment, the General Legal Division concurred with the proposed settlement of $875,000 out of the $1.426 million claimed. This represented the liability of the United Nations for its failure to provide reasonable assistance to the contractor in securing customs clearance for its equipment and the failure of the United Nations to authorize the demobilization without a detailed breakdown of the settlement amount.

55. Regarding the claim for delays or standby time in project implementation, the Office of Legal Affairs agreed that the proposed settlement of the claim for $1.25 million out of the original claim of $1.391 million was reasonable, based on its discussion with the Procurement Division and Field Administration and Logistics Division, from which it concluded that the delays were beyond the control of the contractor.

56. With respect to the United Nations claim for liquidated damages against the contractor of $1.054 million which was settled for $842,000, the Office of Legal Affairs accepted the reduction in liquidated damages calculated by the Procurement Division and the Field Administration and Logistics Division without having received detailed information.

57. The Office of Legal Affairs informed the Board that it considered that it is the role of substantive offices to calculate and verify the amount of compensation to be paid to a claimant and that it is not the role of the Office of Legal Affairs to confirm such

amounts. The Board considers, however, that the role of the substantive office is limited to making a recommendation on the amount of the settlement and that the General Legal Division's concurrence with that recommendation must be based on an informed assessment.

58. **The Board recommends that the Office of Legal Affairs should make an informed assessment of the recommendations for settlement submitted by substantive offices prior to giving its concurrence.**

59. The United Nations entered into a contract with a contractor (appendix 1, No. 1), for the provision of rations and potable water to military contingents assigned to UNOSOM in the amount not exceeding $56.28 million for the period from 1 January to 31 December 1994. Disputes between the Organization and the contractor arose in connection with this contract and other goods and services supplied outside the terms of the contract. As a result, the contractor filed claims totalling $29.5 million against the United Nations.

60. Initially, the contractor's claim totalled $12.3 million, mainly due to the non-payment of invoices by the United Nations. After several rounds of negotiations between the United Nations and the contractor, the Office of Legal Affairs drafted a settlement agreement of $4.8 million, in full and final settlement of the claims, after consultation with the other members of the United Nations negotiating team including representatives of the Purchase and Transportation Service and the Field Operations Division. This was signed by the contractor on 22 December 1994 stating that the deadline for acceptance by the United Nations was 6 p.m. on 30 December 1994.

61. In view of the ultimatum of the contractor, and threats to terminate the supply of rations to the UNOSOM troops, and the urgent need for the contractor's services in order to feed the UNOSOM troops, the Office of Legal Affairs advised that Purchase and Transportation Service should sign the draft settlement agreement "subject to approval pursuant to the United Nations Financial Regulations and Rules". This advice was based on the understanding by the Office of Legal Affairs that the settlement agreement was otherwise acceptable to the relevant United Nations substantive units and that the Purchase and Transportation Service would process it through the Headquarters Committee on Contracts expeditiously. It was expected that the process would be completed by 13 January 1995. The contractor rejected the conditional acceptance by the United Nations and regarded the settlement agreement as valid.

62. The dispute reached arbitration and, among the contentious issues was the validity of the settlement agreement, which the Arbitral Tribunal subsequently held valid on the grounds of equitable estoppel (i.e., the claimant was justified in expecting that the settlement agreement would be eventually approved in accordance with the Financial Regulations and Rules, and the United Nations was therefore precluded from denying the enforceability of the settlement agreement because such approval was not obtained). The Board was concerned that the Organization had settled a claim for $4.8 million without approval of the settlement agreement at the appropriate level and that the proviso drafted by the Office of Legal Affairs had been held invalid by the Arbitral Tribunal.

63. The Board further noted that under the settlement agreement between the United Nations and the contractor, the applicable rate of interest was not specified. During the arbitration proceedings, the contractor contended that the proper rate of interest on the unpaid claim was 9 per cent per annum under New York law while the United Nations proposed a rate of 5.34 per cent. The Tribunal utilized the rate of 9 per cent per annum in computing interest due on all other claims and counterclaims granted in the award. Thus, the United Nations was obliged to pay interest of $802,593, some $326,000 more than if the interest rate had been 5.34 per cent as proposed by the United Nations.

64. In addition, the settlement agreement imposed an obligation on the contractor to compensate the United Nations for the full replacement value of missing, unaccounted, lost or stolen, damaged or destroyed equipment. The meaning of "full replacement value" was not, however, defined under paragraph 8.4 of the settlement agreement. Thus, while the United Nations argued that full replacement value meant the value of acquiring new equipment, the Arbitral Tribunal held that the value of the specific unreturned item, with its distinctive characteristics of wear and tear and consequent depreciated value was applicable.

65. **The Board recommends that, in the formulation of the settlement agreement, the Office of Legal Affairs, should:**

(a) Review the use of "proviso" clauses and clarify the circumstances in which they can be used and held valid;

(b) Ensure that settlement agreements include a clear provision concerning the applicable rate of interest due on claims and counterclaims;

(c) Clearly define ambiguous terms, such as "full replacement cost".

66. The Board welcomes the initiative of the Office of Legal Affairs to include a provision in the arbitration clause in the United Nations general conditions of contract limiting the amount of interest that may be awarded by the Arbitral Tribunal. The Office of Legal Affairs assured the Board that it makes every effort in reviewing contracts to identify and avoid the use of ambiguous terms.

67. In relation to the contractor's claims of $29.5 million, the United Nations filed counterclaims with a total value of $5.275 million. This includes an amount of $2 million which the Arbitral Tribunal ruled was not a counterclaim. Instead, this "counterclaim" was treated by the Arbitral Tribunal as a valid defence to the contractor's claim of $2.86 million under one of its invoices. Against that claim, the Tribunal awarded only $886,000. Of the remaining counterclaim of $3.275 million, only $266,000, including interest of $43,000 was awarded in favour of the United Nations. An analysis of the causes of the Tribunal's denial of the amount of $3.052 million counterclaim is presented below.

Reason	*Amount denied*
Amount barred in the settlement agreement	$1 575 431.79
Lack of sufficient evidence to prove its claim	1 462 193.83
Difference in costing items by United Nations and the Arbitral Tribunal	14 705.05
Total	**$3 052 330.67**

68. The Tribunal's denial of $1.575 million was based on paragraph 3 of the settlement agreement, which provides that: "Release of counterclaims by the United Nations upon the effective date of the settlement agreement and for and in consideration of the foregoing release and discharge by [the contractor] the United Nations does release and discharge [the contractor] from these counterclaims which the United Nations has notified [the contractor] have arisen under or pertinent to the contract."

69. Moreover, the amount of $1.462 million denied by the Arbitral Tribunal represented equipment issued by the United Nations to the contractor where the proof of value presented was merely estimated prices reflected in the United Nations Standard Cost Manual. This gave the prices as new, whereas the Tribunal ruled that the United Nations was only entitled to the depreciated value of the equipment.

70. The Board was concerned that the denial of United Nations counterclaims emanated primarily from the settlement agreement and from the lack of sufficient evidence to support the claims.

71. **The Board recommends that the Administration should carefully draft settlement agreements and ensure that there is proper supporting evidence to maximize the chances of success of potential counterclaims.**

72. A claim for rental payment of $15,000 per month for 18 months was filed by a lessor (appendix 2, No. 3) for the occupation of the premises by a national contingent of UNOSOM. In March 1995, the mission settled in the amount of $60,000, representing 12 months rental at $5,000 per month without obtaining the standard Release and Waiver of Claim document from the claimant. This would have released the United Nations from further claims in respect of UNOSOM occupation. In March 2000, more than three years after the last communication with the claimant, the lessor reasserted his claim in the amount of $345,000. This matter was still pending at the time of the audit.

73. **The Board recommends that the Office of Legal Affairs should advise all United Nations offices of the need to secure a Release and Waiver of Claims from claimants, to protect the interest of the United Nations from further claims.**

74. The Office of Legal Affairs concurs with the recommendation and explained that it is the policy of the Organization that any payment in settlement of claims against the United Nations be conditional on the signing of a release by the claimant and promised to disseminate the lessons learned.

F. Other issues

75. The Board noted three cases of claims, as discussed below, which were filed after the lapse of a considerable period of time. This rendered difficult the retrieval of relevant documentation and adversely affected the Organization's capacity to resist the claims. All three cases did not contain a provision for a prescriptive period within which the claims might be filed.

76. One case (appendix 2, No. 18) involved a total claim of $1.3 million. In 1996, some three years after the implementation of the aircraft charter agreement, the lessor filed the claim for payment of the lease of MI-26 helicopters in Burundi, extraordinary increases in "war risk" insurance premiums and unpaid rental amounts for MI-17 helicopters in Somalia. The delay made it difficult for the United Nations to retrieve relevant documentation and other evidence in support of the Organization's position. The case was still pending at the time of the audit.

77. In another case (appendix 2, No. 26), the contractor was awarded the contract for the supply of petroleum products in August 1994 to the United Nations Assistance Mission for Rwanda (UNAMIR). Only in February 1996 did the Company file claims amounting to $65.5 million for the loss of five tanker trucks belonging to its subcontractor and consequent loss of profits, business earnings and goodwill. This was more than one year from the date of the alleged loss of the trucks and after UNAMIR had closed down its operations. Hence, UNAMIR had faced extreme difficulty in obtaining information relating to the alleged disappearance of the trucks. This case was still pending at the time of the audit.

78. In a third case (appendix 2, No. 2), where the United Nations leased a building known as the UNOSOM II residence and its surrounding premises, the lessor's claim for additional rental amounting to $68,000 was submitted in 1995, at a time when UNOSOM II had already withdrawn from Somalia, thus rendering on-site verification practically impossible. The High Courts have dismissed the case on the grounds of United Nations Privileges and Immunities.

79. **The Board recommended and the Office of Legal Affairs agreed that the Office of Legal Affairs should prescribe a period of limitation on the filing of claims against the United Nations, to be incorporated in all United Nations contracts. This should be developed in consultation with relevant United Nations offices.**

80. The Board also found one case where the Administration had failed to confirm that a contractor had obtained proper insurance coverage as required under the contract. In 1996, the claimants (appendix 2, No. 37) filed a third party claim in the amount of $15,059 against the United Nations for damages to three houses in Ruiyigi City, Burundi, in connection with the evacuation of United Nations and United Nations-related personnel by a chartered MI-26 helicopter. The Office of Legal Affairs recommended that the then Purchase and Transportation Service should forward the claim to the lessor for onward submission to the aircraft insurers, in view of a contract provision which required the lessor to provide and maintain a comprehensive insurance coverage to cover its liability under the contract.

81. The Board noted, however, that the Purchase and Transportation Service and the Field Administration and Logistics Division had not confirmed the existence of the insurance coverage until the United Nations had received the claim for damages, despite the requirement in the charter agreement for the delivery of the Certificates of Insurance to the United Nations. Such requirement was made a condition precedent to the effective date of the agreement. This situation indicated the lack of monitoring by relevant United Nations offices to ensure compliance with contract provisions.

82. The Office of Legal Affairs explained that it had advised the Procurement Division to confirm whether the insurance certificates in this case were received as it is the Procurement Division's responsibility to ensure that contractors comply with the insurance requirements, performance security obligations and other conditions set forth in the contract.

83. **The Board recommended and the Administration agreed that, in the future the Procurement Division should ensure compliance with the insurance coverage in all contracts and other provisions, intended for the protection of the United Nations.**

III. Acknowledgement

84. The Board of Auditors wishes to express its appreciation for the cooperation and assistance extended by the Under-Secretary-General for Legal Affairs, the officers and staff of the Office of Legal Affairs, the Under-Secretary-General for Management and staff, the Under-Secretary-General for Peacekeeping Operations and staff of the Field Administration and Logistics Division.

(*Signed*) Guillermo N. **Carague**
Chairman, Philippine Commission on Audit

(*Signed*) John **Bourn**
Comptroller and Auditor General of the United Kingdom of Great Britain and Northern Ireland

(*Signed*) Shauket A. **Fakie**
Auditor-General of South Africa

Notes

[a] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 5* (A/55/5).

[b] Ibid.

Appendix 1

Cases of arbitrated claims against the United Nations during 1994-1997 examined by the Board (In millions of US dollars)

No.	Respondent	Amount of claim against the UN A	Amount of counter claim by the UN B	Amount of award* or settlement† C	Expenses of the United Nations			Status of the case
					Interest D	Legal fees E	Arbitration cost F	
1	United Nations	29.5	5.27*	17.25**[a]	1.5	1.38	0.12	Completed.
2	United Nations	11.2	.19	.77[b]	-	-	-	Claim settled for $771,021 in April 2000.
3	United Nations Development Programme	1.74		-	-	-	-	Case still pending.
4	United Nations	2.7	None	1.25[b]	-	.025		Settled for $1.25 million.
5	United Nations	.59	None	-	-	-	-	Case withdrawn by claimant. No payment made by UN. Case completed.
	Total	**45.73**	**5.46**	**19.27**	**1.5**	**1.405**	**0.12**	

*This amount includes $2 million which the Arbitral Tribunal treated as a valid defense to one of the claimant's claim, rather than a counterclaim.
**This includes an amount of $9.248 million which was paid in 1995 prior to the initiation of the arbitration proceedings and which the Arbitral Tribunal used for the purpose of computing the final award.

Appendix 2

Schedule of other cases reviewed by the Board of Auditors

No.	Respondent	Amount of claim against the United Nations	Counterclaim by the respondent	Settlement	Status
		In millions of US dollars			
1	United Nations	.190	None	None	Matter not pursued by claimant for more than 2 years, case considered closed by OLA.
2	United Nations	.680	None	None	Case in High Court dismissed on 14 Nov 1996. Appeal rejected on 1 November 1999.
3	United Nations	1.7	None	None	On 3 March 2000, claimant reasserted his claim in the amount of $345,000.
4	United Nations	.064	None	.045	Settlement signed on 7 December 1999 for $45,000 - paid on 1 April 2000.
5	United Nations	1.5	None	.385	Settled on 24 March 1997 for $385,000 - paid on 27 March 1997.
6	United Nations Children's Fund	8.0 to 9.0	None	None	Contract terms renegotiated.
7	United Nations Children's Fund	5.0 to 6.0	None	None	Claim resolved through May 1997 contract amendment.
8	United Nations	.750	None	.275	Settled on 30 September 1997 for $275,000 paid on 2 October 1997.
9	United Nations	.679	None	None	Dispute was settled by amending contract in September 1996.
10	United Nations	3.6	None	.650	Settled in September 1997 - paid 27 October 1997.
11	United Nations	.800	None	.125	Settled in September 1996. The United Nations contributed $125,000 to the settlement.
12	United Nations Office for Project Services	.148	None	.040	Settled in February 1997.
13	United Nations Verification Mission in Guatemala	.275	None	.070	Settled in July 1997 without going to arbitration for $70,000.
14	United Nations	3.084[1]	None	1.55	Settled in September 1997 - paid on 11 December 1997 for $1.55 million.
15	United Nations	16.64[2]	3.97	2.03	Financial claim settled in May 1997 for $2.03 million, as part of an overall settlement for work done
16	United Nations	.320	None	.225	Escrow of $225,000 agreed to in April 1997 for settlement of claim.
17	United Nations	.480	None	.084	Settled in June 1996 - paid $84,000.
18	United Nations	1.30	None	None	Case still pending.
19	United Nations	3.0	None	None	Claim addressed through contract amendment in 1996.
20	United Nations Peacekeeping Force in Cyprus	.021[2a]	None	None	On-going. United Nations has possible counterclaim.
21	United Nations Operation in Somalia II	Not stated	None	None	Advice given by OLA to FALD. Claim to be dealt by the Government.

Schedule of other cases reviewed by the Board of Auditors

No.	Respondent	Amount of claim against the United Nations	Counterclaim by the respondent	Settlement	Status
		In millions of US dollars			
22	United Nations Transitional Authority in Cambodia	443	None	164	Settlement on 22 July 1996 of $164,160 was paid on 6 August 1996
23	United Nations	011[1]	None	None	Advice given by OLA to FALD 22 Sept 1997.
24	United Nations	5 183	None	None	Advice given by OLA to FALD 15 Dec 1997
25	United Nations	42 409	None	See status column	$244,333 was paid by the UN in accordance with a court judgement to a creditor of the claimant and an indemnity and hold harmless undertaking was obtained from the creditor
26	United Nations	65 5	None	None	Pending.
27	United Nations	1 4	420	Zero-zero settlement	Settled in April 2000 (no cash payment involved)
28	United Nations	160	None	090	Settled on 12 October 1999 - paid $90,000 on 9 November 1999
29	United Nations	1 2	92 6	None	United Nations treats this as a claim by government.
30	United Nations	2 2	None	None	Pending.
31	United Nations Assistance Mission for Rwanda and United Nations	235	None	None	United Nations insurer settled part of claim ($42,000). Negotiations continue and Insurance Section is to keep GLD up-dated on developments.
32	United Nations Assistance Mission for Rwanda	115 and 025[4]	None	None	Case still pending.
33	UNTOFY	3 2[5]	None	2 5	Settled in October 1996 - paid on 15 November 1996 - $2 5 million.
34	United Nations	4 0	None	None	Case dismissed on 16 Sept 1996; appeal denied on 28 Aug 1997, a petition for writ of certiorari denied.
35	United Nations	2 012	None	500	Settled in 1995 – paid in Escrow for $500,000.
36	United Nations	105	None	None	OLA advised PD of UN policy not to pay interest. No further information received from PD
37	United Nations	015	None	None	OLA advised that lessor should deal with the claim by submitting it to the insurance company
	Total	**176.62**	**96.99**	**8.73**	

1. Consist of pre-mobilization of $1.43 million, stand-by time of $1.39 million and demobilization of $0.27 million
2. Conversion from 18.0 million, 4.3 million, 2.2 million ECU using 1.082 ECU: 1$ (Year 2000 conversion rate was used)

2a. Conversion from 36,874 Cyprian pounds, as of rate of exchange of $0.573 : 1 Cyprian pound = $21,128 (Year 2000 conversion rate was used.)

3. FAF 75,102 converted at the United Nations rate of exchange in August 2000 equal FAF7.09745
4. Conversion from T.Sh 20 million using 792: 1$ (Year 2000 conversion rate was used)
5. Originally $7 million, reduced to $3.2 for settlement purposes.

Appendix 3

United Nations initiated claims during 1994-1997 examined by the Board				
No.	Claimant	In millions of US dollars		Status
		Amount of claim	Settlement	
1	United Nations Office for Project Services	.031	.030	Settled in July 1997. UNOPS received $30,000 plus additional payment in kind.
2	United Nations	.052	None	Claim written off. OPPBA proposed write-off of the claim in February 1997; GLD concurred in April 1997.
3	United Nations	.098	.060	Settled on 29 May 1998.
4	United Nations	.311	None	Case pending.
5	United Nations	.666	None	Respondent ended in bankruptcy. Its remaining assets will be sold or auctioned. UNCDF to seek reimbursement.
6	United Nations Children's Fund	.137	None	Initial advice given to UNICEF on the merits of the case.
7.	United Nations	2.6	1.0	Parties are currently preparing settlement / release arrangements.
Total		**3.9**	**1.09**	